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No. 02-1019

In The
Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari
To The Arizona Court Of Appeals,
Division Two

PETITIONER'S REPLY BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

Gant's Brief on the Merits concedes the question presented. He agrees that the "initial contact" rule imposed by the Arizona Court of Appeals is wrong. Because the correctness of that rule was the only question presented and the only issue upon which this Court granted review, this case must be disposed of by reversing the judgment below.

While acknowledging the court of appeals' error, Gant urges the Court to ignore the question presented in this case and find alternative reasons to conclude that the court of appeals reached the correct result. To do so, he relies on a theory that completely misconstrues *New York v. Belton*, 453 U.S. 454 (1981). Gant now argues that *Belton* requires fact-specific inquiries concerning the risks in particular situations to determine whether police officers may search a vehicle incident to the arrest of a recent occupant, when *Belton* specifically rejected that approach. Gant's analysis essentially eviscerates the bright-line rule that this Court adopted in *Belton* and, in doing so, undermines the safety of police officers conducting arrests.

Gant's amici also abandon the court of appeals' decision and, instead, urge the Court to adopt a "seized-in-the-vehicle" test that is unduly limiting and just as problematic, dangerous, and inconsistent with *Belton*'s principles as the rule announced in *State v. Gant*, 43 P.3d 188 (Ariz. App. 2002). Pet. App. A1-A12.

Despite Gant's assertions to the contrary, the operative facts established in the record fully support the search of his vehicle under *Belton:* Gant was lawfully arrested; he was a recent occupant of his vehicle at the time of his arrest; and the search was conducted following that arrest.

This Court should reverse the judgment below and hold that the vehicle search incident to Gant's arrest comports with *Belton*.

ARGUMENT

I. GANT AND HIS AMICI HAVE ABANDONED THE *GANT* RULE, THEREBY CONCEDING THAT THE COURT OF APPEALS' DECISION SHOULD BE REVERSED.

A. The Question Presented Concerns the Validity of the Initial Contact Rule.

There is only one question presented in Arizona's petition for certiorari: whether *Belton* is limited by the initial contact rule imposed by the Arizona Court of Appeals. This question properly focuses on the court of appeals' conclusion that *Belton* "applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant.'" Pet. App. A, at ¶ 11 (quoting *United States v. Hudgins,* 52 F.3d 115, 119 (6th Cir. 1995)). Applying that inappropriate limitation on *Belton*, the court of appeals concluded that "the facts . . . do not show . . . that Gant was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle," and, consequently, the warrantless search of Gant's vehicle was not a lawful search incident to his arrest. *Id.* at ¶ 9.

Based on the holding in the opinion below, the question presented for review in this case is:

> When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

Pet. at i.

Gant's own formulation of the question presented in his brief opposing certiorari sought review of the initial contact rule.[1] And in his opposing brief Gant defended the merits of the initial contact rule arguing that "the Arizona Court of Appeals properly held in *State v. Gant* that a *Belton* 'search incident to arrest' was inapplicable in situations involving defendants who are arrested after *voluntarily* departing their vehicles prior to any police contact." Resp. Br. in Opp. at 7 (emphasis in original).

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[1] Gant framed the question for review as follows:

> When the police first initiate contact with a defendant after the defendant no longer controls or occupies his vehicle, and the defendant is subsequently arrested, does the U.S. Supreme Court's holding in *New York v. Belton* apply, allowing a full search of the vehicle incident to arrest, or is the search limited by the U.S. Supreme Court's holding in *Chimel v. California*, allowing only a search of the defendant himself and his immediate area?

Resp. Br. in Opp. at ii.

B. Gant Retreats from the Initial Contact Rule.

In his brief on the merits, Gant now expressly disavows the initial contact rule that is the sole question for review before this Court:

> [R]espondent does not endorse the court of appeals' attempt to formulate a test for future cases focusing exclusively on the suspect's awareness of police presence and whether or not any such awareness motivated the suspect to exit the vehicle.

Resp. Br. at 27. Although Gant defended the initial contact rule when opposing certiorari, Resp. Br. in Opp. at 4, 7, 9, 11-12, he now agrees that:

> [s]uch subjective inquiries can present difficult proof problems . . . and therefore cannot provide the basis for a workable test that can be applied consistently by police officers in the field or by courts to the myriad fact situations that arise in this context.

Resp. Br. at 27.

Gant also agrees with the State that "[The *Gant*] test's focus on the suspect's state of mind is problematic," and that "it is not the best approach for resolving these Fourth Amendment issues." *Id.* at 1. Gant attempts to qualify his dramatic retreat by asserting that an arrestee's "voluntary" exit from the vehicle prior to any contact with the police could be "*relevant* to the question whether the search at issue was reasonable." *Id.* at 27 (emphasis in original). Nevertheless, by expressly rejecting the court of appeals' initial contact rule, Gant now agrees with the State that the answer to the question presented to this

Court is "no" – *Belton* is not limited to situations in which the arrestee was actually or constructively aware of the police before getting out of the vehicle he recently occupied.

C. This Court Should Address the Question Presented and Reverse the Judgment Below.

In light of Gant's retreat, he now urges the Court to ignore the question presented. Indeed, he chastises the State and the United States for addressing the question presented, claiming that they are "attempt[ing] to divert the Court's attention," Resp. Br. at 7, 11, because the State and its amici are addressing the very question the Court has decided to review.

Gant urges this Court to bypass the question presented for review because, he argues, the Court can affirm on alternate grounds. *See, e.g.*, Resp. Br. at 1 ("These briefs spend little time discussing the facts of this case or the question whether the search in this case was reasonable."). He notes that the "Court's role is to review judgments, not correct or critique opinions," and argues, "the Court's fundamental task here is to decide whether the court below correctly concluded that the State failed to satisfy its burden of proving the lawfulness of the warrantless search of respondent's vehicle." *Id.*

Gant's arguments that this Court should disregard the question presented for review have no merit. The issue squarely before the Court for review, therefore, is whether the court of appeals correctly determined that *Belton* does not apply when a person is arrested after voluntarily exiting his vehicle. The Court's task is to answer the

question presented, not some other question – even if the answer to another question might be dispositive of the case. *See, e.g., Owasso Indep. Sch. Dist. v. Falvo,* 534 U.S. 426, 431 (2002) ("[I]t is our practice 'to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari.'") (quoting *Bragdon v. Abbott,* 524 U.S. 624, 638 (1998)).

Moreover, the judgment below is that the State's failure to satisfy the initial contact rule is sufficient reason for rejecting the application of *Belton.* That judgment is in error, and in reversing it the Court would be reviewing the judgment below. Gant contends "[t]he question that this Court must answer is whether the warrantless search of respondent's car was lawful." Resp. Br. at 11. But if Gant is correct that an erroneous Fourth Amendment decision must (or should) be left undisturbed unless and until the Court undertakes an overall "lawfulness" analysis, then nearly every Fourth Amendment search case would devolve into precisely the kind of fact-bound case-specific question that the Court generally does not resolve.

The question presented is of national significance. The Court has twice granted certiorari on the issue presented – first in *Florida v. Thomas,* 532 U.S. 774 (2001) (certiorari dismissed as improvidently granted due to jurisdictional defect) – and again here. As the State argued in its petition for certiorari, resolution of the question presented is important for law enforcement and for the lower courts that are addressing these cases.

Because the initial contact rule imposed by the Arizona Court of Appeals is not required for a vehicle search incident to arrest under *Belton,* the Court should reverse the judgment below. Without the improper initial contact

rule, the search is a lawful search incident to arrest under *Belton*.

II. GANT'S PERCEPTION THAT THE FACTS OF THIS CASE ARE INSUFFICIENT TO JUSTIFY SEARCHING HIS CAR INCIDENT TO HIS ARREST RESULTS FROM A FUNDAMENTAL MISUNDERSTANDING OF THE *BELTON* RULE.

Gant urges this Court to affirm the decision below on an alternative basis that is itself just as flawed as the initial contact rule he now abandons. Specifically, he rests his entire argument on the notion that the State failed to introduce enough case-specific factual evidence that an exigency existed in this particular case. Resp. Br. at 8-11, 20-28, 32-33. That notion rests on the egregiously misplaced idea that *Belton* requires such a case-specific factual inquiry, when, in fact, *Belton* expressly rejected that very idea.[2]

[2] As part of Gant's inappropriate fact-specific analysis, he relies on material from outside the record, specifically the joint appendix from the *Belton* litigation. Resp. Br. at 16 & nn.5-6; Resp. Br. at 19. The Court should not consider that material. *See Ramdass v. Angelone*, 530 U.S. 156, 168 (2000) (Kennedy, J.) (plurality opinion) (Supreme Court precedent constitues the principles expressed in the controlling opinion and does not include the briefs and record items in the underlying case).

A. Gant's Retrospective, Fact-intensive Analysis of the Circumstances of His Arrest Misinterprets *Belton* and Undermines the Safety of Police Officers.

1. *Belton* presumes that exigent circumstances exist when a recent occupant of a vehicle is arrested.

Gant contends that the factual record is insufficient because it fails to establish any actual exigency at the time of the arrest or to demonstrate any significant ongoing danger to officers or evidence after Gant had been secured in the patrol car. Resp. Br. at 8-11, 20-28, 32-33. Gant's retrospective, fact-intensive analysis of the circumstances of his arrest is wrong because *Belton* does not require proof of actual, case-specific exigency, either at the time of arrest or during the search of the vehicle after an arrestee is secured. Gant's fact-bound hindsight analysis ignores *Belton*'s presumption of exigency.

Consistent with this Court's Fourth Amendment jurisprudence, *Belton presumes* that exigencies concerning officer safety and evidence preservation exist at the time of an arrest, and requires no individualized, case-specific proof of actual danger to police officers or to evidence:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found on the person of the suspect.

Belton, 453 U.S. at 461 (quoting *United States v. Robinson*, 414 U.S. 218, 235 (1973)). "The danger to the police officer flows from the fact of the arrest, and its attendant proximity,

stress, and uncertainty." *Robinson*, 414 U.S. at 234 n.5. Consequently, evidence of case-specific, actual exigency is not required. *Id.*; *Washington v. Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."); *Bailey v. State*, 12 P.3d 173, 177 (Wyo. 2000) (dangers to officers and evidence are presumed to exist at arrests of recent occupants of automobiles).

2. Gant disregards the dangers that law enforcement officers confront when arresting suspects.

Although Gant acknowledges that exigencies exist whenever the police make an arrest, Resp. Br. at 13, he cavalierly disregards officer safety. He maintains that any genuine, case-specific dangers – including threats posed by confederates and bystanders – can be assessed after the fact, on the cold record, and that simple arithmetic – more officers than arrestees – adds up to no need to search the car. Resp. Br. at 9, 25-27, 33. But as the Court recognized in *Robinson*, the exigencies include not just the known and readily perceptible dangers but also the "uncertainty" of the entire scenario. 414 U.S. at 234 n.5. In the real world, custodial arrests involving vehicles are often chaotic and unpredictable, presenting "legitimate and weighty" concerns for officer safety. *Knowles v. Iowa*, 525 U.S. 113, 116-17 (1998). Hence this Court in *Belton* announced its prospective bright-line rule, which "clearly authorizes [a search of the car's passenger compartment] *whenever* officers effect a custodial arrest." *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983) (emphasis added).

Gant views *Belton* through the wrong end of the telescope. While *Belton* is a prospective rule designed to

guide police officers in safely arresting the recent occupants of automobiles, Gant's analysis is retrospective, focused on second-guessing the officers' conduct, piecemeal and in hindsight, to determine whether that conduct was justified by actual exigencies. The two approaches are diametrically opposed.

Belton's presumption that exigent circumstances exist when a recent occupant of a vehicle is arrested encourages police officers to secure the arrestee before searching the vehicle rather than attempting to hold the arrestee in or very near the vehicle while conducting a traditional immediate-area-of-control search under *Chimel*.[3] Gant's approach would do the opposite. Gant would permit a search of the vehicle of a recent occupant if officers fail to secure the arrestee away from the vehicle when conducting the search, but would not permit the search when an officer chooses the more sensible practice of securing the arrestee before searching the vehicle. This is an absurd distortion of *Belton*'s effort to craft a "workable rule" for searching a vehicle following the arrest of a recent occupant.

B. Gant's Interpretation of *Belton* Entirely Eviscerates That Holding or Repeats the Court of Appeals' Error.

1. *Belton* forged a bright-line rule.

Belton ensures that arrests involving recent occupants of vehicles are conducted as safely as possible within

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[3] *Chimel v. California*, 395 U.S. 752 (1969).

constitutional parameters, to protect police officers, the arrestee, and the public, and to preserve evidence.[4] The Court in Belton established a bright-line rule, noting that the *Chimel* search-incident-to-arrest rule was "difficult to apply in specific cases" because the rule can become too fact specific:

> A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.

Belton, 453 U.S. at 458 (quotation marks and citation omitted). Thus, concluded the Court, a "familiar standard is essential to guide police officers," for "[w]hen a person cannot know how a court will apply a settled principle to a recurring factual situation, . . . a policeman [cannot] know the scope of his authority." *Id.* at 458, 459-60.

To avoid the necessity of "requiring the drawing of subtle nuances and hairline distinctions," the Court based its holding in *Belton* not on a case-specific, fact-intensive inquiry about the actual size of the area into which the particular arrestee might grab, but on the *generalization* that *all* recent occupants of vehicles can reach into the

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[4] As discussed in Petitioner's opening brief, the *Belton* rule is also supported by the reduced expectation of privacy in automobiles generally – diminished even further when the occupant is placed under custodial arrest. *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring) (citations omitted), *overruled by United States v. Ross*, 456 U.S. 798 (1982).

interior of the vehicle – even if, in a particular case, that might not turn out to be correct. *Id.* at 460. This Court recognized that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon or evidentiary item." *Id.* Thus, the Court held unequivocally that:

> when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

Id.

2. Gant distorts *Belton*'s bright-line rule.

Gant completely misapprehends *Belton*'s bright-line rule. He contends that it concerns only what portions of the car may be searched, and that the State must still show, on a case-by-case basis, that a particular recent occupant could reach the interior of a car. Resp. Br. at 8, 18-19.

Gant's fragmented perception of *Belton* cannot be squared with *Belton*'s reasoning. According to Gant, half of *Belton* is a bright-line rule (officers can search the entire passenger compartment) and half of *Belton* is an ad hoc, fact-specific, case-by-case analysis (search of the car will be upheld only upon a factually specific showing that the recent occupant could have grabbed something in the interior of the car). Gant's cobbled-together version of *Belton* – half bright-line, half ad hoc – pays no heed to the

Court's own warning that a "familiar standard is essential to guide police officers," for "[w]hen a person cannot know how a court will apply a settled principle to a recurring factual situation, . . . a policeman [cannot] know the scope of his authority." 453 U.S. at 459-60.

Gant necessarily theorizes that this Court, after setting forth a bright-line rule about the scope of a search incident to arrest, promptly flouted its own good advice and imposed a prerequisite case-specifio factual inquiry concerning potential danger. This is so implausible and plainly wrong that Gant does not and cannot point to any court in any jurisdiction that has discussed *Belton* in such terms. Notably, Gant's amici do not share his distorted view. They acknowledge that *Belton*'s bright-line rule includes a presumption of exigency and that it rejects case-by-case assessment of actual danger. ACLU/NACDL Br. at 4-6, 12-14 (arguing that limiting *Belton* to cases where the suspect was "seized in the vehicle" would obviate case-specific determinations of actual exigency and recent occupancy).

At times, Gant also appears to argue that whether a case-by-case, fact-specific showing is required turns upon whether the defendant was in or out of the car when he was arrested. For example, at one point Gant argues unqualifiedly that *Belton*'s reference to the "occupants" of a vehicle "make[s] plain that the police may search a car incident to a lawful arrest." Resp. Br. at 18. But in the very next sentences Gant argues that *Belton*'s "only reference" to a vehicle's "recent occupants" establishes that "police may search a car incident to a lawful arrest" – to which Gant adds the further qualification: "so long as the arrestee's area of immediate control at the time of the arrest 'arguably' includes the passenger compartment of

the vehicle." Resp. Br. at 18-19. Thus, Gant may be advocating that a case-by-case, fact-specific inquiry into a suspect's actual grab area is required only when the suspect was outside the vehicle at the time of the arrest.

If that is what Gant proposes, then the distinction he draws – an arrestee in the car versus an arrestee outside the car – erects a rule almost indistinguishable from the initial contact rule imposed below, which he ostensibly disavows. The proposed rule should be rejected for the same reasons that the initial contact rule should be rejected. It would foster gamesmanship. It might force officers to make their presence known to suspects prematurely or make an arrest at a time when sound police procedures dictate otherwise. And it would be arbitrary because a suspect standing immediately outside a car might grab something inside the vehicle just as easily as could a person inside the car. For all these reasons, thoroughly discussed in the State's briefs in response to the *Gant* court's initial contact rule, Gant's conception of *Belton* is illogical and unworkable.

III. GANT'S AMICI OFFER AN ILLOGICAL, "SEIZED-IN-THE-VEHICLE" STANDARD CONTRARY TO *BELTON* AND JUST AS DANGEROUS AS THE *GANT* RULE.

Gant's amici contend that *Belton* applies only when the arrestee is "seized" while "inside a vehicle." ACLU/NACDL Br. at 4-6, 26-29. The Court should reject the amici's analysis because it: (1) is inconsistent with *Belton*, *Long*, and the Court's Fourth Amendment jurisprudence regarding seizures; (2) tacitly revives the court of appeals' flawed initial contact rule; and (3) fails to offer a logical, workable rule.

As the cornerstone of their proposal, Gant's amici grossly distort the meaning of "seizure" by equating it with the mere presence of police officers. Seizure occurs only when police officers effect some form of official detention. *See, e.g., California v. Hodari D.*, 499 U.S. 621, 629 (1991) (even assuming police made a show of authority enjoining suspect to halt, suspect who did not comply was not "seized" until pursuing officers tackled him); *Michigan v. Chesternut*, 486 U.S. 567, 575-76 (1988) (presence of a police car driving parallel to pedestrian's path, although potentially intimidating, does not, standing alone, constitute seizure); *Florida v. Royer,* 460 U.S. 491, 497 (1983) (plurality opinion) (noting that mere approach by law enforcement officers, identified as such, does not constitute seizure).

Gant's amici, ignoring those precedents in a strained attempt to justify their theory of *Belton*, redefine "seizure" by asserting that the defendant in *Long* was "seized" from the moment that the police stopped to *investigate* his traffic accident. ACLU/NACDL Br. at 25. In other words, according to Gant's amici, Long was "seized" by the mere possibility of detention, because "during any investigative stop, police may detain [a] person against his will." *Id.* But Long's automobile was subject to search under *Belton* because he was a recent occupant when the officers formally arrested him, not because he was automatically "seized" when the officers pulled up at the site of his traffic accident. 463 U.S. at 1035 n.1 & 1049 n.14. Furthermore, if Long was somehow "seized" by the mere presence of the police before he got out of his car, Gant likewise was "seized" by the presence of police officers on his premises, shining a flashlight at his face while he drove up and

parked his car. The attempt to distinguish *Long* from *Belton* and from the facts in Gant's case makes no sense.

By equating "seizure" with the mere presence of or contact with police officers, Gant's amici's proposal amounts to nothing but a camouflaged reprise of the *Gant* court's initial contact or confrontation test – whether police officers made their presence known by some form of contact while the suspect was in the vehicle. Gant's amici declare that "[Long's] ability to exit his vehicle before being ordered to do so by the police did not convert the *confrontation* into a non-seizure." ACLU/NACDL Br. at 25 (emphasis added). If pre-exit "confrontation" is the key to their proposal, then Gant's amici are merely repeating the court of appeals' error.

Even applying the concept of seizure in its correct legal sense, the proposed seized-in-the-vehicle test is unduly narrow. It almost exclusively encompasses semi-custodial situations, such as traffic stops, involving some form of official detention where police have the present ability to arrest the suspect immediately. The proposal fails to contemplate other situations (as in this case and *Long*) in which police arrest recent occupants in close proximity to automobiles. When police officers are acting under cover or lack access to signaling devices such as a patrol car's siren or light bar, a "seizure" rule would require that officers run a footrace to the automobile to prevent the occupant from becoming a "pedestrian" before he could be "seized." The proposed rule, like the *Gant* pre-exit confrontation rule, is dangerous because it encourages risky behavior by police officers and suspects alike. Implementing *Belton* should not be reduced to a game of "tag."

The test that Gant's amici urge would engender nearly limitless "unintended nuances" regarding what "seized *inside a vehicle*" might mean. When would a person be deemed "inside" or "outside" a vehicle at the instant of seizure? Would reaching or leaning in a window or an open door be sufficient, even if both feet were on the ground? Must a suspect be "mostly" inside, or does "inside" mean "completely inside"? Would a person sitting in the bed of a pickup truck be "inside" the truck? The proposed test, even if not merely a restatement of the *Gant* rule, is illogical, unworkable, and inconsistent with the principles of *Belton*.

IV. THE APPROPRIATE TEST IS WHETHER THE ARREST OCCURRED WHILE THE INDIVIDUAL WAS A RECENT OCCUPANT OF THE VEHICLE.

As discussed fully in the State's opening brief, the appropriate test is whether police arrested the individual while he was a recent occupant of the vehicle – in close spatio-temporal proximity to his occupancy of the vehicle. Pet. Br. at 24-27. This Court applied that very test in *Belton*, holding that Belton's jacket, which had remained inside the car, was properly searched along with the rest of the car's passenger compartment because Belton "had been a passenger [in the car] just before he was arrested." 453 U.S. at 462.

Gant's case is a run-of-the-mill *Belton* situation because Gant, like Belton, was a recent occupant of the vehicle at the time of his arrest, and the vehicle was searched immediately after the arrest. The time and distance between Gant's exit from the vehicle ~~and his~~ arrest were de minimis. What Gant thought and what the police did or did not do to get his attention in the car are

irrelevant. Gant's car was properly searched incident to his arrest because he was a recent occupant of the car when he was arrested.

Nevertheless, Gant and his amici complain that the recent-occupancy test is "not a bright-line rule" and that it fails to avoid "line-drawing problems" because it merely shifts the inquiry to issues of time and place outside the automobile. Resp. Br. at 39; ACLU/NACDL Br. at 22. But as the foregoing discussion of Gant's amici's flawed "seized inside the vehicle" test makes clear, recent occupancy is a far less nuance-laden standard.

Belton's recent-occupancy test, unlike the "seized inside the vehicle" test, requires neither a stop-action camera nor a micrometer to determine whether a suspect's body was "inside the vehicle," in whole or part, at the precise instant of seizure. Instead, the recent-occupancy test is one of reasonableness – whether a reasonable person under the circumstances would regard the suspect as a recent occupant of the automobile at the time of his arrest. Indeed, the very lack of stop-action precision for which Gant and his amici fault the recent-occupancy test facilitates its real-world implementation. In *Chesternut*, this Court applied a reasonable person standard to a suspect's perception of police conduct with respect to seizure and explained:

> The test's objective standard – looking to the reasonable man's interpretation of the conduct in question – allows the police to determine *in advance* whether the conduct contemplated will implicate the Fourth Amendment.

486 U.S. at 574 (emphasis added). The same necessarily holds true when the police apply a reasonable person test

to their perception of a suspect's conduct. Employing *Belton*'s recent-occupancy test allows police officers, trained in objectively evaluating the totality of the circumstances, to make a reasonable person's interpretation of the situation and to decide *in advance* (before searching the vehicle) whether the suspect's arrest occurred in close spatial and temporal proximity to his occupancy of the automobile. As this Court stressed in *Belton*:

> [T]he protection of the Fourth and Fourteenth Amendments can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination *beforehand* as to whether an invasion of privacy is justified in the interest of law enforcement.

453 U.S. at 458 (emphasis added; internal quotation marks omitted).

In sum, although this Court cannot announce precise boundaries for *Belton*'s recent-occupancy test, reasonableness and common sense will preserve rational limitations within the meaning of the Fourth Amendment. The recent-occupancy test – the only viable standard – is already embodied in *Belton*. This Court should apply that test and reverse the court of appeals' decision.

CONCLUSION

The Court should reverse the judgment below and hold that the search of Gant's vehicle was a valid search incident to arrest. Gant was a recent occupant of the vehicle at the time of his arrest, and the search was contemporaneous with that arrest.

Respectfully submitted,

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